IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10261 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ONGC LTD & 2 - Petitioner(s)

Versus

KIRITKUMAR RAOJIBHAI PATEL - Respondent(s)

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Appearance :

MR KUNAL NAIK for M/S TRIVEDI & GUPTA for Petitioner No(s).: 1,2.

MR VB GHARANIYA for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 22/06/2005

ORAL JUDGMENT

1. This Court on 17th June, 2005 had passed the following order :-

> “Mr. Gharaniya is not present even in the third round. As a last chance the matter is adjourned to 22/06/2005.”

1.1. Today when the matter was called on for hearing, Mr. Gharaniya was not present nor any request is made to keep the matter back. Hence, in his absence, the matter is taken up for hearing today.

2. This petition is directed against the order dated 2nd July, 1999 passed by the Labour Court, Vadodara in Recovery Application No. 13 of 1996, whereby the Labour Court while partly allowing the application has ordered the petitioner Corporation to pay a sum of Rs.4,200=00 for the amount of leave salary of 240 days.

3. The short facts of the case are that the respondent workman was engaged as casual labourer intermittently during the period from 1981 to 1984. He was disengaged from the service on the ground that he had not completed 240 days during 12 consecutive months.

4. It is the case of the petitioner Corporation that the respondent workman upon his disengagement from the service approached the Assistant Labour Commissioner, Ahmedabad for providing the employment in the petitioner Corporation for subsequent years. The matter was consolidated and resulted into failure which was ultimately referred to the Industrial Tribunal for adjudication. The Industrial Tribunal vide order dated 20th January, 1990 dismissed the Reference being Reference [ITC] No.30 of 1997.

4.1. Being aggrieved by the aforesaid order, the respondent workman approached this Court by filing Special Civil Application No. 5862 of 1990, whereby this Court vide order

dated 27.6.1994 quashed and set aside the award of the Industrial Tribunal, inter alia issuing the following directions :-

> "The petitioner Corporation is directed that whatever may be position of number of days and months that casual labourers were employed at different camps at Borsad during the said period, the respondent shall be taken to have worked as casual labourer and, therefore, he should be paid at the rate at which other casual labourers were paid during those days in different camps. It was further directed that in computing the amount payable, maximum number of working days shall be taken as 26 days only and the respondent shall abide by the same."

4.2. Being aggrieved by the said order, the petitioner Corporation preferred Letters Patent Appeal No. 660 of 1994 before the Division Bench whereby during the pendency of the said Appeal, dispute between the parties was settled. In view thereof, this Court vide order dated 24th November, 1994 disposed of the Letters Paten Appeal directing the petitioner Corporation to pay to the respondent ex-gratia amount which was due to him in view of the order dated 27.6.1994. It is the case of the petitioner Corporation that in view of the said settlement, the respondent withdrew the Special Civil Application No. 5862 of 1990. It is further the case of the petitioner that full payment has been made in view of the full and final settlement of the claim. The

petitioner has further contended that despite having been settled the matter between the parties, the respondent workman under Section 33 (c) (2) of the Industrial Disputes Act, initiated proceedings by filing Recovery Application before the Labour Court, Vadodara. The Labour Court, Vadodara vide order dated 2nd July, 1999 allowed the said application with the aforesaid directions. Hence, this petition.

5. Mr. Kunal Naik learned advocate for the petitioner has contended that inspite of the fact that the Labour Court has rejected the reference and the same has been confirmed by this Court vide order dated 27.6.1994, the Labour Court has issued direction to pay Rs.4,200=00 towards the leave salary for 240 days, which is contrary to the order passed by this Court.

6. I have heard the learned advocate for the petitioner Corporation and have perused the relevant materials produced on record. The contention raised by the petitioner is required to be accepted inasmuch as inspite of the fact that the Labour Court has rejected the reference and the same was confirmed by this Court vide order dated 27.6.1994, the Labour Court has issued direction to pay Rs.4,200=00 towards the leave salary for 240 days, which is contrary to the order passed by this Court. Thus, on this ground alone, the impugned order is required to be quashed and set aside.

7. For the foregoing reasons, the petition is allowed.

The order dated 2nd July, 1999 passed by the Labour Court, Vadodara in Recovery Application No. 13 of 1996, is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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